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2 **BEFORE THE ARIZONA MEDICAL BOARD**

3  
4 In the Matter of:

NO. MD-03-0078

5 **RICHARD A. SILVER, M.D.**

**CONSENT AGREEMENT FOR LETTER  
OF REPRIMAND**

6 Holder of License No. 5135  
7 For the Practice of Allopathic  
8 Medicine In the State of Arizona,

Respondent.

9  
10 **RECITALS**

11 In the interest of a prompt and judicious settlement of the above-captioned matter  
12 before the Arizona Medical Board ("Board") and consistent with the public interest,  
13 statutory requirements and responsibilities of the Board and under A.R.S. § 41-  
14 1092.07(F)(5) and A.R.S. § 32-1451(F), Richard A. Silver, M.D. ("Respondent"),  
15 holder of License No. 5135 for the practice of allopathic medicine in the State of  
16 Arizona., and the Board enter into the following Recitals, Findings of Fact, Conclusions  
17 of Law and Order ("Consent Agreement") as the final disposition of this matter.

18 1. Respondent has read and understands this Consent Agreement as set forth  
19 herein, and has had the opportunity to discuss this Consent Agreement with an attorney  
20 or has waived the opportunity to discuss this Consent Agreement with an attorney.  
21 Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding  
22 the expense and uncertainty of an administrative hearing.

23 2. Respondent understands that he has a right to a public administrative  
24 hearing concerning each and every allegation set forth in the above-captioned matter, at  
25 which administrative hearing he could present evidence and cross-examine witnesses.  
26 By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes

1 all right to such an administrative hearing, as well as all rights of rehearing, review,  
2 reconsideration, appeal, judicial review or any other administrative and/or judicial action,  
3 concerning the matters set forth herein. Respondent affirmatively agrees that this  
4 Consent Agreement shall be irrevocable.

5 3. Respondent agrees that the Board may adopt this Consent Agreement or  
6 any part of this agreement, under A.R.S. § 32-1451(F). Respondent understands that this  
7 Consent Agreement or any part of the agreement may be considered in any future  
8 disciplinary action against him.

9 4. Respondent understands that this Consent Agreement does not constitute a  
10 dismissal or resolution of other matters currently pending before the Board, if any, and  
11 does not constitute any waiver, express or implied, of the Board's statutory authority or  
12 jurisdiction regarding any other pending or future investigation, action or proceeding.  
13 Respondent also understands that acceptance of this Consent Agreement does not  
14 preclude any other agency, subdivision or officer of this state from instituting other civil  
15 or criminal proceedings with respect to the conduct that is the subject of this Consent  
16 Agreement.

17 5. All admissions made by Respondent in this Consent Agreement are made  
18 solely for the final disposition of this matter, and any related administrative proceedings  
19 or civil litigation involving the board and Respondent. This Consent Agreement is not to  
20 be used for any other regulatory agency proceedings, or civil or criminal proceedings,  
21 whether in the State of Arizona or any other state or federal court, except related to the  
22 enforcement of the Consent Agreement itself.

23 6. Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, Respondent  
25 may not revoke his acceptance of the Consent Agreement or make any modifications to

1 the document, regardless of whether the Consent Agreement has been issued by the  
2 Executive Director. Any modification to this original document is ineffective and void  
3 unless mutually approved by the parties in writing.

4 7. Respondent understands that the foregoing Consent Agreement shall not  
5 become effective unless and until adopted by the Board and signed by its Executive  
6 Director.

7 8. Respondent understands and agrees that if the Board does not adopt this  
8 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
9 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

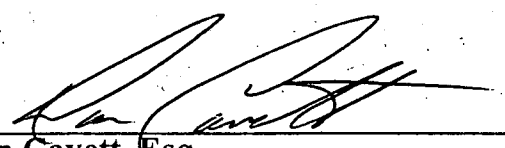
10 9. Respondent understands that this Consent Agreement is a public record  
11 that may be publicly disseminated as a formal action of the Board, and shall be reported  
12 as required by law to the National Practitioner Data Bank and the Healthcare Integrity  
13 and Protection Data Bank.

14 10. Respondent understands that any violation of this Consent Agreement  
15 constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r)([v]iolating a  
16 formal order, probation, consent agreement or stipulation issued or entered into by the  
17 board or its executive director under the provisions of this chapter) and may result in  
18 disciplinary action pursuant to A.R.S. § 32-1451.

19 ACCEPTED BY:

20 DATED: 3/20/05

21   
22 Richard A. Silver, M.D.

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24 Dan Cavett, Esq.  
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**FACTUAL ALLEGATIONS**

**MD-03-0078**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of expired license number 5135 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-03-0078 after receiving notification of a malpractice settlement involving Respondent's care and treatment of a 44 year-old female patient (CP).

4. On October 12, 1995, CP presented to Respondent of bilateral leg pains, no feeling in her left big toe for six weeks, low back pain and partial loss of feeling in her right big toe for three days.

5. CP's back pain progressed and on May 20, 1999, she and Respondent decided he would perform back surgery at L3-L4, L4-L5, and L5-S1.

6. Respondent performed the surgery on July 13, 1999. He also performed diskectomy at L3-4, and diskectomy at L5-S1 and placed BAK cages at L3-4 and L5-S1. Respondent did not adequately fixate and stabilize a decompressive laminectomy at L3-L4, L4-5, and L5-S1.

7. A July 20, 1999 x-ray report shows the posterior lumbar inter-body fusion (PLIF) at L3-4 shows some migration posteriorly of the cages.

8. On August 2, 1999, Respondent performed a second surgery on CP to remove the cages and replace them with larger cages.

9. On August 9, 1999 x-rays again showed migration of the cages.

10. In both surgical procedures the instrumentation of L3-L4 failed because of

1 the lack of adequate fixation and destabilization at the time of the initial procedure, i.e.,  
2 posterior destabilization by laminectomy and facetectomy.

3 11. Based on the medical evidence (history, physical examination, MRI  
4 studies, x-rays, CT scans, EMG/NCV studies) the significant pathology producing the  
5 complaints was at L5-S1. Accordingly, surgery at L3-L4 and L4-L5 was not indicated.

6 12. The standard of care required Respondent to adequately diagnose and treat  
7 CP's condition using the information gathered and making a decision regarding surgical  
8 treatment, when indicated, including determining the procedure(s) to be performed in  
9 order to obtain the desired result. The standard of care required Respondent to properly  
10 interpret the information; determine the necessity of any surgical treatment; identify the  
11 level(s) of the spine requiring treatment; and, determine the appropriate surgical  
12 procedure for the determined level(s) in need of surgical intervention.

13 13. Respondent deviated from the standard of care because he did not  
14 adequately diagnose and treat CP's condition and because he did not properly interpret  
15 the information. There was no clinical evidence of radiculopathy at the L3-L4 level or  
16 on electro-diagnostic studies. The finding of an MRI abnormality in the absence of  
17 clinical findings is not sufficient to indicate a need for surgical intervention.  
18 Posterolateral intervertebral fusion (PLIF) with or without BAK cages is not indicated as  
19 a primary procedure. The laminectomy and facetectomy with PLIF and BAK with fusion  
20 of L3-L4 was not indicated. The second procedure of L3-L4 resulted in some loss of  
21 positioning of the BAK cages. The L3-L4 level should have been stabilized if included  
22 in the surgery. No surgical procedure at the L4-L5 level was indicated from findings in  
23 the physician examination or radiological studies. A second procedure of L3-L4 should  
24 not have been necessary.

25 14. CP was harmed because she had to undergo two operative procedures to  
26

1 correct persistent back pain, which resulted in spinal instability. CP has greater difficulty  
2 with the activities of daily living.

3 **ALLEGATIONS OF UNPROFESSIONAL CONDUCT**

4 1. The Board possesses jurisdiction over the subject matter hereof and over  
5 Richard A. Silver, M.D. ("Respondent"), holder of License No. 5135, for the practice of  
6 allopathic medicine in the State of Arizona.

7 2. The conduct and circumstances described above constitute unprofessional  
8 conduct pursuant to A.R.S. § 32-1401(27)(ll) - ("[conduct that the Board determines is  
9 gross negligence, repeated negligence resulting in harm to or the death of a patient."])

10 3. The conduct and circumstances described above constitute unprofessional  
11 conduct pursuant to A.R.S. § 32-1401(27)(q) - ("[a]ny conduct or practice which is or  
12 might be harmful or dangerous to the health of the patient or the public.

13 **CONSENT ORDER**

14 **IT IS THEREFORE ORDERED that:**

15 1. Respondent, Richard A. Silver, M.D. ("Respondent"), holder of License  
16 No. 5135, is hereby issued a Letter of Reprimand for performing spinal surgery at three  
17 levels without supporting indications, resulting in spinal instability.

18 2. This Order is the final disposition of case number MD-03-0078.

19 DATED AND EFFECTIVE this 13 day of April, 2005.

20 ARIZONA MEDICAL BOARD

21 (SEAL)



By: Timothy C. Miller

TIMOTHY C. MILLER, J.D.  
Executive Director

1 Original of the foregoing filed this  
2 14<sup>th</sup> day of April, 2005, with:

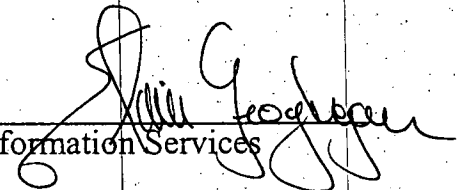
3 Arizona Medical Board  
4 9545 E. Doubletree Ranch Road  
5 Scottsdale, Arizona 85258

6 EXECUTED COPY of the foregoing mailed by U.S.  
7 Certified Mail this 14<sup>th</sup> day  
8 of April, 2005, to:

9 Mr. Dan Cavett, Esq.  
10 Cavett & Gulton, P.C.  
11 6035 E. Grant Road  
12 Tucson, AZ 85712-2317

13 EXECUTED COPY of the foregoing mailed  
14 this 14<sup>th</sup> day of April, 2005, to:

15 Richard Silver, M.D.  
16 Address of Record

17   
18 Information Services

19 Doc #440275  
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